

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
CAVALIER OPERATING CO., LLC)	FCC File Nos. 0002909707, 0002912913
)	
Request for Waiver of the 5 MHz Separation)	
Requirements of 47 C.F.R. § 90.173(i))	

ORDER

Adopted: April 16, 2007

Released: April 17, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned applications and waiver requests filed by Cavalier Operating Co., LLC (Cavalier).¹ Cavalier seeks authorization to operate on frequencies in the 450-470 MHz band waiver without the standard 5 MHz separation between transmit and receive frequencies set forth in Section 90.173(i) of the Commission's Rules,² either as a matter of right or pursuant to waiver. We conclude that Section 90.173(i) does not permit the proposed operations. Based on the record before us, however, we grant Cavalier's waiver requests.

2. *Background.* Section 90.173(i) provides, "In the 450-470 MHz band, the frequencies are ordinarily assigned in pairs, with the mobile station transmit frequency 5 MHz above the paired base station transmit frequency."³ Cavalier is the licensee of trunked 450-470 MHz Industrial/Business Pool Station WQEQ220, Cleveland, Ohio. It utilizes the frequencies to coordinate crowd control and event management at a sports arena.⁴ Cavalier indicates, however, that, given the number of units and channels in use in the confined space of the arena, the standard 5 MHz channel separation has resulted in an intolerable degree of intermodulation interference that severely restricts the utility of the system.⁵ It states that it has tried technical solutions, such as reducing transmitter power and adding attenuation, but the problem has persisted.⁶ Cavalier now seeks authorization to operate with non-standard channel separation.

3. *Discussion.* Cavalier suggests that Section 90.173(i) permits its proposed operations, because the rule provides that 450-470 MHz band frequencies "ordinarily" are assigned in pairs with 5 MHz spacing, but does not mandate such spacing. We disagree. The rule provides that 450-470 MHz band frequencies "ordinarily" are assigned in pairs, but permits assignment of unpaired simplex frequencies.⁷

¹ See FCC File Nos. 0002909707 (filed Feb. 12, 2007), 0002912913 (filed Feb. 14, 2007, amended Mar. 12, 2007). Attached to both applications is the same Request for Assignment of Other Than 5 MHz Paired 450 MHz Channels or, in the Alternative, for a Waiver of FCC Rule Section 90.173(i) (Waiver Request).

² See 47 C.F.R. § 90.173(i).

³ *Id.*

⁴ Waiver Request at 1.

⁵ See *id.* at 1-2.

⁶ See *id.* at 2.

⁷ See Douglas R. Thompson d/b/a Cara Enterprises, *Memorandum Opinion and Order*, 15 FCC Rcd 2816, 2819 ¶ 10 (WTB PSPWD 2000).

When the frequencies are paired, however, the rule mandates 5 MHz spacing.⁸ Consequently, Cavalier requires a waiver of Section 90.173(i).

4. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or that, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁹ We conclude that Cavalier has shown that a waiver is warranted under the circumstances presented.

5. The purpose of the 5 MHz separation requirement is to maintain a uniform separation between base and mobile operations.¹⁰ This serves, *inter alia*, to standardize the frequency bands on which base and mobile station operations will occur, which facilitates reuse of the spectrum by other licensees. We conclude that the underlying purpose of the rule would not be frustrated by a waiver in the present case. We note that Cavalier proposes to utilize fewer frequencies than are currently authorized to Station WQE220, and to operate with a lower effective radiated power. Permitting the proposed frequency configuration will therefore reduce the level of potential interference to other users. We also conclude that a waiver will serve the public interest, by contributing to the safety of the public attending events at the arena.

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver requests filed by Cavalier Operating Co, LLC, with respect to applications FCC File Nos. 0002909707 and 0002912913 ARE GRANTED, and applications FCC File Nos. 0002909707 and 0002912913 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁸ See Amendment of Parts 21, 89, 91, and 93 of the Rules to Reflect Availability of Land Mobile Channels in the 470-512 MHz Band in the 10 Largest Urbanized Areas in the United States, *Notice of Further Proposed Rulemaking*, Docket No. 18261, 27 F.C.C. 2d 371, 372 ¶ 5 (1971) ("Finally, as to these technical aspects of our notice, we have the question as to the appropriate frequency separation between base and mobile frequencies. In the proceeding in Docket No. 13847, which dealt with the 450-470 MHz band, we considered this matter and adopted *requirements for uniform 5 MHz separation* between base and mobile channels.") (emphasis added) (citing Amendment of Parts 89, 91, 93, and 95 (Formerly 10, 11, 16, and 19) of the Commission's Rules to Reduce the Separation Between the Assignable Frequencies in the 450-470 Mc/s Band, *Second Report And Order*, Docket No. 13847, 11 F.C.C. 2d 648, 649-50 ¶¶ 6-7 (1968)).

⁹ See 47 C.F.R. § 1.925(b)(3).

¹⁰ See, e.g., Amendments to the Amateur Service Rules Including Amendments for Examination Credit, Eligibility for a Club Station License, Recognition of the Volunteer Examiner Session Manager, a Special Event Call Sign System and a Self-Assigned Indicator in the Station Identification, *Memorandum Opinion and Order*, WT Docket No. 95-57, 14 FCC Rcd 8812, 8813 ¶ 3 (1999).